

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 13**

<b>SEARS, ROEBUCK AND CO.,</b>	)	
	)	
<b>Respondent,</b>	)	
	)	
<b>and</b>	)	<b>Case 13-CA-191829</b>
	)	
<b>LOCAL 881 UNITED FOOD AND</b>	)	
<b>COMMERCIAL WORKERS,</b>	)	
	)	
<b>Charging Party.</b>	)	
	)	

**CHARGING PARTY, LOCAL 881 UNITED FOOD AND  
COMMERCIAL WORKERS'S MOTION TO ACCEPT POST-HEARING BRIEF**

Pursuant to the National Labor Relations Board's Rules and Regulations, Series 8, as amended, Local 881 United Food and Commercial Workers ("Local 881") moves that the Board accept its Posting-Hearing Brief filed on May 9, 2018. In support of its motion, Local 881 states as follows:

**INTRODUCTION**

The deadline for filing the post-hearing briefs was on May 4, 2018. On that date, Local 881's Counsel had copies of its brief delivered via U.S. Postal Service and Email to the General Counsel's attorney and the Respondent's attorney at 4:31 p.m. At that time, Local 881's Counsel believed the brief had been submitted to the Division of Judges. (see Affidavit of Joseph C. Torres).

On May 9, 2018, at 9:57 a.m. the Local 881's Counsel received a phone call from Vivian Robles. Ms. Robles informed him that she did not see his brief on the docket. After speaking to Ms. Robles, he investigated the matter learned that his brief was not filed with the Division of Judges. Thereafter, Local 881's post-hearing brief was filed at 10:20 a.m.

## ARGUMENT

Local 881 respectfully requests that the Hearing Officer accept Local 881's post-hearing brief.

An untimely brief may be accepted if the filing party demonstrates excusable neglect for the late filing. *Int'l Union of Elevator Constr.*, 337 N.L.R.B. 426, 427 (2002), citing *Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380 (1993). Whether the neglect is excusable is an equitable one and takes into account all relevant circumstances surrounding a party's untimely filing. *Id.* The relevant circumstances include the danger of prejudice to non-moving parties, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, whether the delay was in the reasonable control of the movant, and whether the movant acted in good faith. *Id.* These factors do not carry equal weight, and the excuse given for the late filing carries the greatest import. *Int'l Union of Elevator Constr.*, 337 N.L.R.B. at 427; see also *Barstow Cmty. Hosp.*, 352 N.L.R.B. 1052 (2008) (the ALJ in the underlying decision accepted a brief that was mistakenly filed in the wrong Region by the attorney's secretary because it was an inadvertent error and the nonmoving party did not suffer undue prejudice).

Local 881's failure to timely file its brief is excusable neglect. Most significantly, the Respondent was not prejudiced by the late filing. Mr. Stolzenbach received Local 881's brief via email on May 4 at 4:31 p.m., and that exact brief was filed with the Division of Judges on May 9. Accordingly, Respondent was not unduly deprived of Local 881's brief nor did Local 881 gain an unfair advantage from receiving the Respondent's brief before it filed its own.

Additionally, Local 881's counsel demonstrated good faith in his effort to timely file the brief and remedy the error. Local 881's counsel was away from the office for personal reasons.

Indeed, he attempted to ensure the brief was filed with the Division of Judges while traveling. Moreover, as soon as he learned the brief was not filed, within minutes he ensured the brief was immediately filed. As exhibited by his actions, Local 881's Counsel was not grossly negligent. A simple miscommunication between himself and a legal assistant caused the untimely filing. There was no malicious intent or recklessness on behalf of the attorney. Accordingly, the error was made in good faith.

In the end, the untimely filing of Local 881's brief was an error made in good faith and under the totality of the circumstances Local 881 asks that it is excused.

### **CONCLUSION**

For all of the foregoing reasons, Petitioner, Local 881 United Food and Commercial Workers, respectfully requests that the Judge grant Local 881 UFCW's Motion to Accept Post-Hearing Brief.

DATE: May 9, 2018

Respectfully Submitted,

By: /s/Joseph C. Torres  
Joseph C. Torres  
Attorney for Local 881 UFCW

The Karmel Law Firm  
221. N. LaSalle St., Suite 1550  
Chicago, IL 60601  
(312) 641-2910  
Joe@karmellawfirm.com

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 13**

<b>SEARS, ROEBUCK AND CO.,</b>	)	
	)	
<b>Respondent,</b>	)	
	)	
<b>and</b>	)	<b>Case 13-CA-191829</b>
	)	
<b>LOCAL 881 UNITED FOOD AND</b>	)	
<b>COMMERCIAL WORKERS,</b>	)	
	)	
<b>Charging Party.</b>	)	
	)	

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a true and correct copy of Local 881 UFCW's Motion to  
Accept Brief by electronic filing and electronic mail on May 9, 2018, upon the following:

Vivian Robles  
Field Attorney  
National Labor Relations Board  
Region 13  
219 S. Dearborn, Suite 808  
Chicago, Illinois 60604  
Vivian.robles@nrlrb.gov

Brian M. Stolzenbach.  
Attorney for Respondent  
Seyfarth Shaw LLP  
223 South Wacker Drive, Suite 8000  
Chicago, Illinois 60604  
bstolzenbach@seyfarth.com

Respectfully submitted,

/s/ Joseph C. Torres  
Joseph C. Torres  
Attorney for Local 881 UFCW

The Karmel Law Firm  
221 N. LaSalle Street, Suite 1550  
Chicago, Illinois 60601  
p: (312) 641-2910  
f: (312) 641-0781  
[joe@karmellawfirm.com](mailto:joe@karmellawfirm.com)